

RS

UNITED STATES TAX COURT
Washington, D.C. 20217

ERIC ONYANGO,)	
)	
Petitioner,)	
)	Docket Nos. 27788-11L
v.)	19081-12L
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

On July 24, 2014, petitioner (1) filed a motion to vacate or revise pursuant to Rule 162 (petitioner's motion to vacate) and (2) submitted a motion for reconsideration of findings or opinion pursuant to Rule 161 (petitioner's motion for reconsideration) that the Court had filed as of that date and sealed (petitioner's sealed motion for reconsideration). On August 26, 2014, respondent filed a notice of objection to petitioner's motion to vacate or revise pursuant to Rule 162 and a notice of objection to petitioner's motion for reconsideration of findings or opinion pursuant to Rule 161 (notice of objection to petitioner's motion for reconsideration). On September 3, 2014, the Court sealed respondent's notice of objection to petitioner's motion for reconsideration.

With respect to petitioner's motion to vacate,

The disposition of a motion to vacate or revise a decision lies within the sound discretion of the Court. Although Rule 162 [Tax Court Rules of Practice and Procedure] does not provide any standard for evaluating such a motion, Rule 1(b) [Tax Court Rules of Practice and Procedure] provides that we may give weight to the Federal Rules of Civil Procedure (FRCP) "to the extent that they are suitably adaptable to govern the matter at hand."

We have often referred to FRCP 60 and cases applying FRCP 60 to assist us in resolving issues raised in a motion to vacate decision under Rule 162. [DeNaples v. Commissioner, T.C. Memo. 2011-46 (citations omitted).]

See also Kun v. Commissioner, T.C. Memo. 2004-273.

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Rule 60(b) of the Federal Rules of Civil Procedure (FRCP) provides that a court may relieve a party from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered * * *
- (3) fraud * * *, misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Rule 60(b)(1) through (5) of the FRCP states with specificity the reasons for granting relief. The sixth reason in Rule 60(b)(6) of the FRCP is stated with less specificity as "any other reason that justifies relief." The U.S. Court of Appeals for the Seventh Circuit, the court in which an appeal in this case would normally lie, has held that relief under Rule 60(b)(6) of the FRCP "is an 'extraordinary remedy' and should be granted only in 'exceptional circumstances'." Banks v. Chicago Bd. of Educ., 750 F.3d 663, 668 (7th Cir. 2014) (quoting Banks Machinery & Fabrications, Inc. v. Traditional Baking, Inc., 570 F.3d 845, 848 (7th Cir. 2009)). See also Lal v. State of California, 610 F.3d 518, 524 (9th Cir. 2010); Coltec Industries, Inc. v. Hobgood, 280 F.3d 262, 273 (3d Cir. 2002); Hess v. Cockrell, 281 F.3d 212, 216 (5th Cir. 2002); Griffin v. Swim-Tech Corp., 722 F.2d 677, 680 (11th Cir. 1984).

With respect to petitioner's sealed motion for reconsideration, the granting of a motion for reconsideration rests within the discretion of the Court. Estate of Quirk v. Commissioner, 928 F.2d 751, 759 (6th Cir. 1991), aff'g. in part and remanding in part T.C. Memo. 1988-286; Klarkowski v. Commissioner, 385 F.2d 398, 401 (7th Cir. 1967), aff'g. T.C. Memo. 1965-328. A motion for reconsideration will be denied unless substantial error or unusual circumstances are shown. Estate of Quirk v. Commissioner, supra; Alexander v. Commissioner, 95 T.C. 467, 469 (1990), aff'd. without published opinion sub nom. Stell v. Commissioner, 999 F.2d 544 (9th Cir. 1993); Vaughn v. Commissioner, 87 T.C. 164, 167 (1986).

The Court concludes that petitioner has not established any of the reasons set forth in Rule 60(b)(1) through (6) of the FRCP that warrants the Court's granting petitioner's motion to vacate. The Court further concludes that petitioner has not established any unusual circumstances or substantial error that warrants the Court's granting petitioner's sealed motion for reconsideration.

After due consideration and for cause, it is

ORDERED that petitioner's motion to vacate is denied. It is further

ORDERED that petitioner's sealed motion for reconsideration is denied.

(Signed) Carolyn P. Chiechi
Judge

Dated: Washington, D.C.
September 8, 2014